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COMMITTEE FOR A CONVENTION ON
BIOLOGICAL DIVERSITY

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FIFTH REVISED DRAFT CONVENTION ON BIOLOGICAL DIVERSITY

Explanatory note

1. The fifth revised draft Convention on Biological Diversity contains articles revised by Working Groups I and II of the Intergovernmental Negotiating Committee (INC) for a Convention on Biological Diversity at the third negotiating session/first session of INC (Madrid, 24 June - 3 July 1991), the fourth negotiating session/second session of INC (Nairobi, 23 September - 2 October 1991), the fifth negotiating session/third session of INC (Geneva, 25 November - 4 December 1991) and the sixth negotiating session/fourth session of INC (Nairobi, 6-15 February 1992).

2. The preamble and Article 1 (Objectives) were not revised at the sixth negotiating session/fourth session of INC. They remain unchanged.

3. At the sixth negotiating session/fourth session of INC, Working Groups I and II established open-ended sub-working groups on definitions and use of terms on the basis of the Bureau's proposed distribution of definitions between the Working Groups. The sub-working group of WG.II submitted a proposed text for definitions and WG.II recommended its inclusion in Article 2 of the fifth revised draft Convention with a footnote stating that the new definitions had been formulated by a sub-working group of WG.II and had not been discussed by the Group itself. These terms appear in Article 2 marked with an asterisk (*). The terms contained in Appendix I were prepared by a sub-working group of WG.I but were not considered by WG.I. WG.I recommended that they should be appended to the fifth revised draft Convention.

4. Article 3 (Fundamental Principles) was placed in square brackets and its former paragraph 11 was placed in square brackets and moved to Article 14. Article 4 (General Obligations) was placed in square brackets, and its former sub-paragraphs (f) and (i) of paragraph 2 were placed in square brackets and moved to Article 14 as well. Alternative proposals in the form of elements for reformulation of Articles 3 and 4 are contained in Appendix II.

5. Article 14 *bis* of the fourth revised draft convention was deleted since its substance had been transmitted to WG.I and incorporated to strengthen Article 7 (j), with some elements being incorporated in the

Preamble. Articles 15 and 16 of the fourth revised draft convention were considered together and appear reformulated as Article 17. Article 17 *bis*, paragraphs 4 and 5 of the fourth revised draft convention were reformulated and paragraph 6 was deleted as concerns expressed therein were adequately covered by the reformulated text. The Article appears as Article 20 in the fifth revised draft convention.

6. A general discussion was held at the sixth negotiating session/fourth session INC on Articles 18 and 19 of the fourth revised draft convention and a sub-working group was established. After some discussion in the sub-working group, the Chairman of WG.II ruled that the text of Articles 18 and 19 would be reproduced in the fifth revised draft convention as they appeared in the fourth revised draft convention (UNEP/Bio.Div/N6-INC.4/2) with updated footnotes in order to make it clear that the text resulted from the fifth negotiating session/third session INC. Articles 18 and 19 appear as Articles 21 and 22 respectively, in the fifth revised draft convention.

7. Articles 23, 26 and 30-43 were considered as revised by the Lawyers' Drafting Group during the fifth negotiating session/third session of INC. No decision was made on Article 23. The revised text of Article 23 is reproduced together with the previous version, both are in square brackets. Article 26 was not discussed in substance and is reproduced as prepared by the Lawyers' Drafting Group. The previous version of Article 30 is reproduced with an additional alternative.

8. During the sixth negotiating session/fourth session of INC a legal drafting group was established with a mandate to give a legal review of Articles 31-43. The recommendations of the group, which were adopted by the Plenary, are reflected in paragraph 4 of Article 32 (Amendment of the Convention or Protocols) and sub-paragraphs (b) and (c) of Article 33 (Adoption and Amendment of Annexes).

9. At the sixth negotiating session/fourth session of INC a number of articles, paragraphs and sub-paragraphs were deleted, moved or rearranged. The articles and paragraphs have been renumbered to read sequentially.

10. The draft includes appropriate footnotes resulting from the deliberations of the sixth negotiating session/fourth session of INC. All relevant footnotes resulting from the previous sessions of the INC are retained in the text.

Preamble [1]

The Contracting Parties,

Recognizing that humanity shares the earth with other forms of life and accepting that these should exist independently of their benefits for humanity;

Affirming that the conservation of biological diversity is a common concern of all peoples;

Conscious of the ever growing environmental, ecological, genetic, scientific, aesthetic, recreational, cultural, educational, social and economic values of biological diversity and its components;

Recognizing the close and traditional dependence of many local communities and indigenous populations on biological resources, their continuing interest in their conservation, and the need to reward their knowledge and innovations associated with the conservation and wise use of biological diversity and its components;

Noting that biological diversity is being seriously reduced and that some species are threatened with extinction;

Accepting that the threats to these irreplaceable resources include degradation of the environment from habitat destruction and pollution, human population growth, unsustainable exploitation of some species, and the unlawful taking of flora and fauna;

Noting the deterioration in quality of life caused by unwise use of biological resources;

Stressing that in exercising their sovereign rights over their biological resources States have a responsibility to use and develop them in a sustainable manner and to conserve biological diversity;

Stressing the importance of and need to promote cooperation among States and international governmental and non-governmental organizations in a coordinated and comprehensive regional and global approach for the conservation of biological diversity and sustainable use and development of its components in areas both under and beyond national jurisdiction and control;

Aware that the conservation of natural habitats and the maintenance of viable populations of species in natural surroundings are vital components of the *in-situ* and *ex-situ* conservation of biological resources;

Recognizing to this end the need to set aside areas of natural habitat for the conservation of biological diversity and to pursue sustainable development outside these areas through planning and management which conserves biological diversity to the maximum extent possible;

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[1] The Group of 77 and China requested that the proposal contained in Appendix II to the fifth revised draft Convention on Biological Diversity be considered with the Preamble.

Aware that the conservation of biological diversity also requires special measures independent of natural surroundings [which are also vital];

Aware of the benefits from the sharing and diffusion of knowledge about biological diversity, its uses and developments, technologies and practices favourable to its conservation;

Acknowledging that special provision is required to meet the needs of developing countries, including the provision of additional financial resources and access to relevant technologies, bearing in mind that the funds can be expected to make a substantial difference in the world's ability to address the loss of biodiversity;

Accepting that the developed countries and large industrial enterprises, including transnational corporations, have benefitted from their significant role in the development and use of biological resources;

Considering that these countries and enterprises can help avoid additional costs and burdens for developing countries which forgo exploitation of their biological resources when acting in accordance with this Convention;

Stressing the need for States, international organizations and non-governmental organizations to promote the conservation of biological diversity and the wise use and development of its components;

Noting that action by States and international organizations directly and jointly to conserve biological diversity and to use and develop its components in a sustainable manner will strengthen cooperative and friendly relations among States, and contribute to peace and security for all peoples; and

Agreeing that existing international arrangements dealing with biological resources do not cover, in spite of the progress achieved, all aspects of biological diversity, the sources of threats to it and the wise use and development of biological resources,

Have agreed as follows:

Article 1. Objectives

[The objective of this Convention is to conserve the maximum possible biological diversity for the benefit of present and future generations and for its intrinsic value, [and to provide for the fair and equitable sharing of the benefits of research in biotechnology arising out of conservation of the biological diversity. This is to be achieved] by ensuring that the use of biological resources is sustainable; [by providing adequate, new and additional funding to the developing countries] [by taking account of the need to share costs and benefits between developed and developing countries,] and by [securing] [providing] economic and legal conditions favourable for the transfer of technology [to them on preferential and non-commercial terms] necessary to accomplish this objective.]

Article 2. Use of Terms for the Purpose of this Convention [2]

[For the purposes of this Convention:

"ALIEN SPECIES" means a species occurring in a particular country or area outside its historically known natural range, as a result of intentional or accidental dispersal by human intervention.

"BIOLOGICAL DIVERSITY (OR BIODIVERSITY)" means the variety of and variability among living organisms and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

BIOLOGICAL RESOURCES includes genetic resources, organisms or part thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.*

BIOTECHNOLOGY means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.*

"CONSERVATION OF BIOLOGICAL DIVERSITY" means the preservation (or integral protection), maintenance, sustainable use, recovery and enhancement of the components of biological diversity.

"CONSERVATION": see conservation of biological diversity.

COUNTRY PROVIDING GENETIC MATERIAL/RESOURCES means the country supplying genetic resources collected from *in-situ* sources, including populations of both wild and domesticated species, or taken from *ex-situ* sources, which may or may not have originated in that country.*

COUNTRY OF ORIGIN OF GENETIC RESOURCE [3] means the country which possesses those genetic resources in *in-situ* conditions.*

"DOMESTICATED OR CULTIVATED SPECIES" means species in which the evolutionary process has been influenced by humans to meet their needs.

"ECOSYSTEM" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as an ecological unit.

"ENDANGERED SPECIES" means a species in danger of extinction and whose survival is unlikely if the causal factors continue operating.

"ENDEMIC SPECIES" means a species whose natural geographic distribution is restricted to a specific area or country.

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[2] Terms followed by "*" were proposed by a sub-working group of Working Group II but not discussed by the Working Group itself.

[3] Definition proposed by the chairman of the sub-working group of WG.II on the basis of informal consultations with some members of the sub-working group.

EX-SITU CONSERVATION means the conservation of components of biological diversity (genetic material, organisms, populations) outside their natural surroundings.*

GENETIC MATERIAL means any material of plant, animal, microbial or other origin containing functional units of heredity.*

GENETICALLY MODIFIED ORGANISMS means organisms in which the genetic material has been altered in a way that does not occur naturally by mating, recombination, or natural selection.*

GENETIC RESOURCES means genetic material of actual or potential value.*

"HABITAT" means the place or type of site where an organism or population naturally occurs.

"INDIGENOUS POPULATIONS": it is advised that the word "populations" be substituted by the word "people" when used for humans.

"INDIGENOUS SPECIES" means a species occurring in the wild in a particular area or country, within its known natural range.

IN-SITU CONSERVATION means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated species, in the surroundings where they have developed their distinctive properties.*

"NONTERRESTRIAL SPECIES" means organisms not relying on the land for a significant aspect of their life cycle.

"PROTECTED AREA" means a geographically defined area which is designated or regulated, and managed to achieve specific conservation objectives.

"RATIONAL USE OF BIOLOGICAL DIVERSITY" means the use of components of biological diversity in a way and at a rate that does not lead to their long term decline.

"SPECIES THREATENED WITH EXTINCTION": see threatened species.

"TERRESTRIAL SPECIES" means organisms relying on the land for a significancant aspect of their life cycle.

"THREATENED SPECIES" means species that are either endangered or vulnerable.

"UTILIZATION/USE OF BIOLOGICAL DIVERSITY": see rational use of biological diversity.

"WILD SPECIES" means a species which has not been deliberately modified by humans.

"(WILDLIFE) CORRIDORS" means routes or avenues to ensure completion of life cycles and unimpeded migrations and gene flows.]

[*Article 3. Fundamental Principles* [4]

The following fundamental principles shall guide the Contracting Parties in the achievement of the objectives of this Convention:

1. The conservation of biological diversity is a [matter of] common concern of all humankind and requires cooperation by all Contracting Parties.

2. The Contracting Parties have as States the sovereign right to exploit their own biological resources pursuant to their own environmental policies and the responsibility:

(a) For the conservation and sustainable use of their biological resources; and

(b) For ensuring that activities within their jurisdiction or control do not cause damage to the biological diversity of other States or of areas beyond the limits of national jurisdiction.

3. The fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings. *Ex-situ* measures, preferably in the country of origin, also have an important role to play.

4. Conservation of biological diversity, particularly of migratory species and their habitats, cross-border ecosystems and areas beyond the jurisdiction of each State Party, requires international cooperation in addition to the national effort that strengthens it.

5. While recognizing that remedying damage to biological diversity is important, it is vital to anticipate, prevent and attack the causes of reduction or loss of biological diversity at source.

6. Where there is a threat of [serious or irreversible damage to] [significant reduction or loss of] biological diversity, lack of full scientific certainty shall not be used as a reason for postponing [measures] [actions] to avoid or minimize such a threat.

7. The value of the contribution of biological resources and of maintenance of biological diversity and the uneven distribution of these resources among countries are to be recognized and reflected in economic and financial arrangements among them, with the countries benefiting most from biological diversity carrying the main responsibility for the cost of its conservation. [5]

8. The benefits of research and development derived from biomaterial taken from developing countries are to be made available to those developing countries. [5]

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[4] The Group of 77 and China requested that the proposal contained in Appendix II to the fifth revised draft Convention on Biological Diversity be considered in conjunction with this Article.

[5] Paragraphs 7-10 were transferred by WG.I to WG.II for consideration.

[8. Countries providing genetic material located within their national jurisdiction shall share in benefits from the research and the development which make use of that genetic material.] [5],[6]

9. Technology related to conservation of biological diversity and the sustainable use and development of its components is to be transferred to developing countries on a preferential and non-commercial basis. [5]

10. Technology related to conservation of biological diversity and the sustainable use and development of biological resources is to be developed jointly by the owners of the resources and those with financial, scientific and technical resources. [5]

11. Countries are to gain directly from all the contributions that biological resources within their jurisdiction or control make to environment protection, economic development and better health and quality of life in other countries.

12. Practices and innovations developed in the course of traditional life and by indigenous [peoples] [communities] [populations] which contribute to the wise and sustainable use of biological resources and conservation of biological diversity are to be recognized and rewarded.

13. The additional burden on developing countries arising out of protection of their biological diversity requires new and additional funding to be provided by the developed countries through a new multilateral fund to be established under this Convention.

14. Access to genetic material and substances and products derived from them or to technology related or contributing to the conservation of biological diversity which are within the jurisdiction or control of a State is to be [open] [on the basis of mutual agreements].

[14. Access to genetic material [and substances and products derived from them] or to technology related or contributing to the conservation of biological diversity which are within the jurisdiction or control of a State is to be [open] [on the basis of mutual agreements]. [7]

15. The application of biotechnology may involve risks and requires regulatory approaches involving safeguards for health and the environment.

16. Patent systems may have unwanted socio-economic effects for developing countries and small farmers.

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[5] Paragraphs 7-10 were transferred by WG.I to WG.II for consideration.

[6] Provisional formulation to replace Article 3, paragraphs 8 and 12.

[7] Provisional formulation to replace Article 3, paragraph 14 with the text in the first set of square brackets (beginning with the words "and substances and") to be deleted.

17. Biotechnology contributes to the conservation and sustainable use of biodiversity, which requires a wide genetic base. [8]

[17. The maintenance of a wide genetic base is necessary for biotechnology to be able to contribute to conservation and sustainable use of biological diversity.]] [9]

[Article 4. *General Obligations* [10]

1. [Each Contracting Party] [The Contracting Parties] shall take [in accordance with [the means at [their] [its] disposal [,] [and]] [its] [their] capabilities] [and [its] [their] national plans, programmes and priorities], [all] [possible] [appropriate] measures [in accordance with the provisions of this Convention] [to ensure] [consistent with] the conservation of [the maximum possible] biological diversity and the sustainable use [and the development] of its components within [the area under] [its] [their] national jurisdiction [or control].

[They shall ensure that activities within their jurisdiction [or control] do not cause damage to the biological diversity of other States or of areas beyond the limits of national jurisdiction.]

[They shall ensure that the [measures of] conservation of biological diversity and the sustainable use [and the development] of its components are [as far as possible appropriately integrated into national plans and policies.] [Treated as an integral part of national [development] plans and are taken duly into account in all relevant sectoral policies and legislation.]]

[The Contracting Parties shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through appropriate international organizations with a view to ensuring the conservation of biological diversity in areas beyond national jurisdiction.]

The Contracting Parties shall cooperate with each other and with or through such international organizations as they may deem appropriate in coordinating their activities and in supporting and assisting each other in fulfilling their obligations under the present Convention [related to biological diversity and] [biotechnology] [relevant aspects of biotechnology] [including health, food and industrial processes].

2. [To these ends, the Contracting Parties shall in accordance with the means at their disposal and their capabilities:]

(a) Cooperate in the development of agreed measures, procedures, technologies, practices and standards for the implementation of this Convention, [where appropriate with a view to the adoption of protocols and annexes];

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[8] As recommended by the Lawyers' Meeting, if retained, paragraphs 15, 16 and 17 should be relocated in the Preamble since they are statements of fact.

[9] Provisional formulation to replace Article 3, paragraph 17.

[10] The Group of 77 and China requested that the proposal contained in Appendix II to the fifth revised draft Convention on Biological Diversity be considered with this Article.

(b) Foster favourable economic and legal conditions for the sustainable use and development of biological diversity and its components;

(c) Ensure measures are taken to conserve natural habitats and viable populations of species in natural surroundings;

(d) Provide, establish and implement procedures for assessing the impact on biological diversity of proposed policies, programmes and projects where such an impact may be significant;

(e) Provide individually, or in cooperation with other States and international organizations, [new and additional] financial resources and other forms of cooperation for programmes which support implementation of the provisions of this Convention, taking into consideration the special situations and needs of developing countries [.] [and loss of opportunities for alternative uses of biological resources foregone because of measures taken pursuant to this Convention].

(f) Promote and support scientific research individually and jointly with other Contracting Parties and international organizations;

(g) Promote public awareness of the need to conserve biological diversity and the wise use and development of its components through education and the dissemination of general information;

(h) Facilitate the exchange of information among themselves and with international organizations;

[(i) Taking into consideration the special needs of developing countries, cooperate with the aim of ensuring the capacity of developing countries to implement the provisions of the present Convention through national institutions and legislation.]]

The text below contained in double square brackets is an alternative in lieu of the whole of Article 4.

[[Each Contracting Party shall, [in accordance with the means at its disposal and its national plans, programmes and priorities] [as far as possible and as appropriate,] [as far as practicable and as appropriate and consistent with Articles 5 to ... endeavour to] implement the measures set down in this Convention [with a view to ensuring] [to promote]:

(a) The conservation of [the maximum possible] biological diversity and the sustainable use of its components [in areas within the limits of national jurisdiction];

(b) That activities under its jurisdiction or control do not cause damage to the biological diversity in areas within the limits of the national jurisdiction of other States or beyond the limits of national jurisdiction; and

(c) Through international including regional cooperation, the conservation and sustainable use of biological diversity in areas beyond the limits of national jurisdiction.]

[States shall implement this Convention and its protocols consistent with the rights and obligations reflected in the 1982 United Nations Convention on the Law of the Sea.]

[Article .... *Cooperation*

The Contracting Parties shall co-operate directly or through international organizations, where appropriate, in coordinating their activities in supporting and assisting each other in fulfilling their obligations under this Convention, particularly taking into consideration the needs of developing countries.]]

Article 5. Implementation Measures [1]

1. Each Contracting Party shall, in accordance with the particular conditions and capabilities in each country:

(a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and

(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

[2. Each Contracting Party may take or maintain stricter conservation measures than those provided for in the present Convention.] [2]

Article 6. Identification and Monitoring

Each Contracting Party shall, as far as possible and as appropriate in particular for the purposes of Articles 7 to 10:

(a) Identify components of biological diversity with respect to which it exercises sovereignty, sovereign rights or jurisdiction important for its conservation and sustainable use, [having regard to those identified in Annex ...] [and other international agreements to which it is a party];

(b) Monitor through sampling and other techniques, the components of biological diversity identified pursuant to paragraph (a), and paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;

(c) Identify processes and activities with respect to which it exercises sovereignty, sovereign rights or jurisdiction which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity [having regard to those processes and activities set down in Annex ...] and monitor through sampling and other techniques their effects;

(d) Maintain and organize by any mechanism data derived from identification and monitoring activities pursuant to paragraphs (a), (b) and (c) of this Article;

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[1] One delegation proposed the new title of Article 5 to read "General Conservation Measures". It was agreed that further consideration should be given to the title of this Article.

[2] Agreement on the content and location of this paragraph was delayed pending discussion of Article 23.

(e) [Cooperate] [Cooperate through mutual agreements] with other Contracting Parties, directly or [as appropriate] [where necessary] through relevant organizations, [if appropriate] in identifying and monitoring components of biological diversity, processes and activities pursuant to paragraphs (a) to (d) of this Article, in respect of transboundary matters and areas beyond national jurisdiction. [13]

Article 7. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

(a) Establish a system of protected areas [, and associated wildlife corridors for those components of biological diversity identified pursuant to Article 6] or areas where special measures need to be taken to conserve biological diversity;

(b) Develop where necessary guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;

(c) Regulate or manage biological resources whether within or outside protected areas with a view to ensuring their conservation [and] [,] sustainable use [and sustainable development];

[(d) Provide financial and other assistance for new and existing programmes supporting the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings, with particular attention to technology and the needs of developing countries;] [14]

(e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies;

[(g) Regulate the development, use and release of genetically modified organisms which may have [adverse effects on health] [adverse effects on the conservation and sustainable use of biological diversity];] [15]

(h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;

(i) Endeavour to provide in so far as possible [on the basis of national legislation and in accordance with national programmes, plans and priorities] economic incentives, legislation, and the condition needed for compatibility between present uses [in all relevant sectors including agriculture, forestry and fisheries] and the conservation of biological

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[13] This paragraph was not agreed upon. It was produced as a result of consultation with those two delegations who had difficulty with it and takes into account their concerns.

[14] As recommended by WG.II, WG.I, during the sixth negotiating session/fourth session of INC, decided to postpone the discussion of this sub-paragraph until WG.II completes its work on Articles 21 and 22.

[15] Provisionally accepted pending discussion of Article 20.

diversity and the sustainable use of its components [taking into account the circumstances of countries with economies in transition] [taking into account the needs of developing countries]; [16]

(j) Subject to its national legislation [17] respect, record, protect and promote the wider application of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity with the involvement of the holders of such knowledge, innovations and practices and to share equitably the benefits arising from the utilization of such knowledge, innovations and practices;

[(k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species, populations and varieties [as identified in Article 6];]

[(l) Regulate or manage processes and activities which have or are likely to have a significant adverse effect on biological diversity].

Article 8. Ex-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate [, and for the purpose of complementing *in-situ* measures]:

(a) Adopt measures for the *ex-situ* conservation of components of biological diversity [identified pursuant to Article 6] [preferably in the country of origin] [country possessing such components of biological diversity *in-situ*].

[[To complement *in-situ* measures] [; where providing adequate *in-situ* facilities to conserve the species [components of biological diversity] is impracticable or not feasible]].

(b) Establish and maintain facilities for *ex-situ* conservation of and research on plants, animals and micro-organisms [preferably in the country of origin];

(c) Adopt measures for the recovery and rehabilitation of endangered species and for their reintroduction into their natural habitats under appropriate conditions;

(d) Regulate [manage or control] collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species [ensuring that they are not exploited for commercial purposes];

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[16] Discussion of this paragraph was postponed pending the outcome of the discussion of Article 11.

[17] The reference to national legislation at the beginning of the text was made to accommodate the specificity of the legal system of one State.

[(e) Financial and other assistance to facilitate the establishment and maintenance of *ex-situ* conservation facilities in developing countries.] [18]

[*Article 9*

For Contracting Parties which are developing countries the obligations under Articles 5, 7 and 8 of this Convention would be subject to the provision to them of technical resources, as appropriate, and of adequate, new and additional financial resources covering on a grant basis the entire cost to them for fulfilling their obligations under those articles.]

Article 10. Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate:

(a) Integrate consideration of the conservation and sustainable use of biological resources into national decision making;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced;

(e) Encourage cooperation between governmental authorities and private sector in developing methods for sustainable use of biological resources.

[*Article 11. Incentive Measures*

1. Each Contracting Party shall, as far as possible and as appropriate, [consider] [take] effective economic and social incentive measures [as indicated in Annex ....] to encourage the conservation and sustainable use of biological diversity.

[2. In determining such measures, each Contracting Party shall take into account, *inter alia*:

(a) Economic and social policies which act as incentives to conserve biodiversity;

(b) The effect of:

(i) Institutional arrangements;

(ii) Systems of rights to use biological resources;

(iii) International trade policies; and

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[18] As recommended by WG.II, WG.I, during the sixth negotiating session/fourth session of INC, decided to postpone the discussion of this sub-paragraph until WG.II completes its work on Articles 21 and 22.

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.

Article 14. [Impact Assessment] [Minimizing Adverse Impacts]

Each Contracting Party, as far as possible and as appropriate shall:

(a) Introduce appropriate procedures requiring assessment of the environmental effects of proposed projects that are likely to have significant adverse effects on biological diversity [whether within or beyond the limits of national jurisdiction] with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures.

(b) Introduce appropriate arrangements to ensure that the environmental consequences [whether within or beyond the limits of national jurisdiction] of programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account.

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation about activities under their jurisdiction or control which are likely significantly to adversely affect the biological diversity of other States [21] or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements as appropriate. [22]

[(d) Those responsible for activities which threaten or could [damage] [cause significant loss of] biological diversity are responsible for the costs of avoiding that threat or damage and for remedial action directly or through financing where damage occurs.] [23]

[(e) In the case of imminent or grave danger or damage originating under its jurisdiction [or control] to biological diversity within the area under jurisdiction [or control] of other States or in areas beyond the limits of national jurisdiction [or control], notify immediately the potentially affected States of such danger or damage, and establish the necessary procedures for that purpose, as well as initiate [at source] action to prevent or minimize such danger or damage.]

[Be responsible for the cost of avoiding or minimizing threats or damage to biological diversity beyond the limits of the areas under its national jurisdiction resulting from activities within its jurisdiction or control and, where such damage occurs for the costs of remedial action and, where it is not possible to return the biological diversity to the *status quo ante*, for compensation.]

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[21] Upon the next reading all paragraphs using words "Contracting Parties" or "States" need to be reconsidered to achieve consistency.

[22] During the sixth negotiating session/fourth session of INC, the text "[as well as for the establishment of contingency plans to address situations affecting biological diversity]" was deleted from this sub-paragraph. While the importance of the issue of "contingency plans" was not contested, WG.I decided that, at the next reading, consideration should be given as to the precise location of the concept reflected in the deleted text.

[23] During the sixth negotiating session/fourth session of INC, this text was moved from Article 3, paragraph 11.

[Establish procedures for international cooperation for the control, mitigation of damage or restoration of biological diversity, when the affected Party or the Party of the origin of damage is not able to address it individually.]] [24]

[(f) Support and cooperate in the development and implementation of international arrangements for emergency responses to activities or events whether caused naturally or otherwise which [presents a grave and imminent danger to] [threaten] biological diversity;] [25]

[(g) The Conference of the Parties shall [adopt a protocol setting down rules of procedures] [consider the need to adopt measures] relating to liability and compensation for damage to biological diversity.] [26]

[*Article 15. Global Lists* [27]

Alternative 1

1. [A Global List of Biogeographic Areas of Particular Importance for the Conservation of Biological Diversity and a Global List of Species Threatened with Extinction on a Global Level shall be established pursuant to the procedures set down in Article 25.] [A List of [Components of] Biological Diversity of [Outstanding Global Importance] shall be established, pursuant to the procedures set out in Article 25.]

[2. Inclusion of an area on the List of Biogeographic Areas of Particular Importance requires the consent of the State or States concerned.

3. Contracting Parties, in fulfilling their obligations under this Convention shall [, so far as possible, and as appropriate for each Contracting Party,] give priority to areas and species on the Global Lists.

4. Inclusion of areas or species on the Lists shall not prejudice the rights of States over areas in respect of which more than one State claims sovereignty or jurisdiction.]]

Alternative to paragraph 1 [27]

[A List of Areas of Outstanding Global Importance shall be established pursuant to procedures to be determined by the Conference of the Parties at its first meeting.]

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[24] During the sixth negotiating session/fourth session of INC, this text was moved from Article 4, paragraph 2 (f).

[25] During the sixth negotiating session/fourth session of INC, this text was moved from Article 4, paragraph 2 (i).

[26] The location of this paragraph was not finalized by WG.I.

[27] An alternative proposal was made to delete the whole of Article 15 with subsequent deletion of Article 25.

Article 16. [Regulated] Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.

3. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

4. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.

5. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources [originating in other Contracting Parties and/or] provided by other Contracting Parties with the full participation of, and where possible in such Contracting Parties.

6. Each Contracting Party shall take the appropriate measures, in accordance with Articles 17 to 23 and where necessary through the financial mechanisms established by Articles 21 and 22, to [promote and advance] [ensure] fair and equitable sharing of the results of research [products developed] and the benefits arising from the [commercial and other] utilization of genetic resources with the Contracting Parties [of origin and/or the Contracting Parties] providing such resources.

Article 17. Access to and Transfer of Technology

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 to developing countries shall be provided and/or facilitated under [fair and reasonable] [fair and most favourable] [preferential and concessional] conditions and, where necessary, in accordance with the financial mechanism established by Articles 21 and 22.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that Contracting Parties [in particular those] that are developing countries which [are of origin and/or] provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms [notwithstanding patents and other intellectual property rights]. [28]

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[28] Some delegations stated that this paragraph may be subject to a review mechanism which may be introduced in this Article or at another appropriate place in this Convention.

4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 of this Article.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of the present Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to the objectives of this Convention.

Article 18. Exchange of Information

1. The Contracting Parties shall facilitate the exchange of information relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of [publicly available] results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 17, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 19. Technical and Scientific Cooperation

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary through the appropriate international and national institutions.

2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, *inter alia*, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.

4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

Article 20. Handling of Biotechnology and Distribution of its Benefits

1. Each Contracting Party shall take appropriate measures to [promote and advance] [ensure] the participation in biotechnological research activities by those Contracting Parties, especially developing countries, [of origin and/or those Contracting Parties] which provide the genetic resources for such research.

2. Each Contracting Party shall [ensure priority access] [promote and advance fair and equitable access] [take appropriate measures to promote and advance priority access] by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources [originating in and/or] provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. Each Contracting Party shall require any natural or legal person under its jurisdiction who intends to introduce in another Contracting Party genetically modified organisms [biotechnology products] which may have an adverse impact on the [conservation and sustainable use of biological resources in] [environment of] that Contracting Party to obtain the [advance agreement] [prior informed consent] of that Contracting Party. Such [agreement] [consent] shall be in accordance with procedures to be established by the Conference of the Parties.

4. Each Contracting Party providing genetically modified organisms [biotechnology products] shall require any natural or legal person under its jurisdiction to provide any available information about the use and safety regulations required by that Contracting Party in handling genetically modified organisms [biotechnology products], as well as any available information on the potential adverse impact of the specific genetically modified organisms [biotechnology products] concerned to the Contracting Party into which those organisms [products] are to be introduced. [29]

Article 21. Financial Resources [30]

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those activities which are intended to [achieve the objectives of this Convention] [contribute to the conservation and sustainable use of biological diversity] in accordance with its national plans, priorities and programmes. [31]

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[29] Some delegations expressed the view that the substance of paragraphs 3 and 4 were not needed.

[30] Some delegations noted at the fifth negotiating session/third session of INC that the final outcome of this article would be closely related to the final text of Article 1 and Article 22.

[31] Basic text proposed by an informal Sub-Working Group of WG.II at the fifth negotiating session/third session of INC.

Alternative 1 for paragraph 2 to replace alternative 2

2. The Contracting Parties which are developed countries commit themselves to provide adequate new and additional financial resources to enable developing countries to achieve the objectives of this Convention. [32] [Developed countries referred to above do not include countries with economies in transition.] [33]

Alternative 2 for paragraph 2 to replace alternative 1

2. The Contracting Parties, and in particular developed countries, undertake to provide [new and additional] financial [and other] resources to meet the agreed incremental costs to developing countries of [achieving the objectives] [fulfilling the obligations under Articles ...] of this Convention. [34]

3. The extent to which developing countries are able to [meet the objectives] [fulfil the obligations under Articles ...] of this Convention will be subject to the availability of [such] resources [to meet agreed incremental costs.] [35]

Article 22. Financial Mechanisms

Alternative 1 [36]

[1. There is hereby established a fund, hereinafter called the Biological Diversity Fund, for the achievement of the objectives of the Convention by developing countries. Contributions to the fund shall be mandatory for Contracting Parties which are developed countries according to the formula in Annex ... to this Convention. Voluntary contributions may also be made by the developed countries and by other countries and sources.]

[2. The Fund shall be administered [through an agency to be decided by the Conference of the Parties] [in the following manner].]

[3. Pursuant to the objectives of this Convention, the Conference of the Parties at its first meeting shall establish detailed criteria and guidelines for access to and utilization of the Fund, including monitoring and evaluation of such utilization.]

4. The Conference of the Parties shall review the effectiveness of the funding mechanism established under this Article, including the criteria and guidelines referred to in paragraph 3, not less than two years after the entry into force of this Convention and thereafter on a regular basis.

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[32] Basic text proposed by an informal Sub-Working Group of WG.II at the fifth negotiating session/third session of INC.

[33] Bracketed text proposed by Bulgaria, Czechoslovakia, Poland, Romania and the USSR at the fifth negotiating session/third session of INC.

[34] Proposal by the United Kingdom with modifications by the United States at the fifth negotiating session/third session of INC.

[35] Basic text by an informal Sub-Working Group of WG.II with modifications by the United Kingdom and the United States at the fifth negotiating session/third session of INC.

[36] Text by an informal Sub-Working Group of WG.II at the fifth negotiating session/third session of INC.

[5. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.]

Alternative 2 to paragraphs 1, 2, 3 and 5 above [37]

[1. The Contracting Parties, pursuant to the objectives of this Convention and taking into consideration the special needs of developing countries, shall establish a [fund] [financial mechanism] to provide the resources which Contracting Parties that are developing countries require to meet the agreed incremental costs for complying with the provisions of this Convention, access to and transfer of technology referred to in Article 17 and the benefits of the provisions of paragraph 6 of Article 16. Contributions shall be assessed according to the formula in Annex ... to this Convention. Additional contributions may also be made by developed countries and by other countries and sources.]

[2. The [fund] [financial mechanism] shall be administered [through the evolving Global Environment Facility] [through a Multilateral Fund for Biological Diversity] [through an agency to be decided by the Conference of the Parties] [in the following manner ...].]

[3. Pursuant to the objectives of this Convention, the Conference of the Parties at its first meeting shall [confirm] [establish] criteria and guidelines [set out in Annex ... to this Convention] for access to and utilization of the [fund] [financial mechanism], including monitoring and evaluation of such utilization.]

[5. The Contracting Parties shall consider strengthening existing financial institutions to support the [fund] [financial mechanism] established under this Convention.]

Article 23. Relationship with Other International Conventions

[1. The provisions of the present Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement relating to the conservation and sustainable use of biological diversity. [38]

2. Any existing international agreement relating to the conservation and sustainable use of biological diversity may be renegotiated as a protocol to the present Convention. [39]

3. The Contracting Parties shall invite the Parties to any international agreement relating to the conservation and sustainable use of biological diversity to agree on arrangements for facilitating joint actions, coordination, and exchange of information.] [40]

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[37] Proposal by the United Kingdom with modification by Mexico at the fifth negotiating session/third session of INC.

[38] The language in paragraph 1 leaves open the question of the relationship of this Convention with future agreements. The Committee may want to make an express provision for this.

[39] The Lawyers' Meeting felt that this paragraph has the character of a recommendation and would invite the Committee to consider the necessity of retaining it.

[40] If retained, the Lawyers' Meeting felt this paragraph might more appropriately be located in Article 24 as a function of the Conference of the Parties.

[1. The provisions of the present Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement compatible with the conservation and sustainable use of biological diversity.]

Article 24. Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within [six] [three] months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules governing the funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.

4. The Conference of the Parties shall keep under review the implementation of the present Convention, and, for this purpose, shall:

(a) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 28 and consider such information as well as reports submitted by any subsidiary body;

[(b) Review [and approve] scientific [information] [technological advice] on biological diversity provided by the Scientific Committee in accordance with Article 27;]

(c) Consider and adopt, as required, in accordance with Articles 32 and 33, amendments to this Convention and its annexes;

(d) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the Protocol concerned;

(e) Consider and adopt, as required, in accordance with Article 33, additional annexes to this Convention;

(f) Consider and adopt, as required, protocols in accordance with Article 31;

(g) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention;

(h) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether governmental or non-

governmental, qualified in fields relating to conservation and sustainable use of biological diversity which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

[*Article 25. Procedures for Global Lists* [4]

The Conference of the Parties shall:

(a) Receive from the Contracting Parties inventories of biogeographic areas within the limits of their national jurisdiction of particular importance for the conservation of biological diversity and inventories of species found within the limits of their national jurisdiction which are threatened with extinction on a global level;

(b) Select, taking into account the recommendations of the Scientific Committee, from the inventories forwarded pursuant to subparagraph (a), areas and species to be included in the Global Lists;

(c) Publish the Global Lists;

(d) Establish, taking into account the recommendations of the Scientific Committee, guidelines to assist Contracting Parties to select areas and species for inclusion in the inventories to be forwarded to the Conference of the Parties pursuant to subparagraph (a);

(e) Establish, taking into account the recommendations of the Scientific Committee, criteria for selecting areas and species for inclusion in the Global Lists pursuant to subparagraph (b) [so that they may contain areas and species representative of the greatest feasible proportion of biological diversity, with particular regard to threatened areas and species];

(f) Establish and publish, taking into account the advice of the Scientific Committee, guidelines to assist the Contracting Parties to manage areas and species on the Global Lists;

(g) Establish and publish guidelines for the provision of financial and other assistance to Contracting Parties where it considers this desirable or necessary in connection with areas and species on the Global Lists; and

(h) Ensure that arrangements made in relation to the Global Lists complement and strengthen the conservation activities of Contracting Parties and international organizations developed and implemented under other international agreements.]

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[4] A proposal was made to delete Article 25 subsequent to deletion of Article 15 (Global Lists).

Article 26. Secretariat

1. A Secretariat is hereby established. Its functions shall be:

(a) To arrange for and service meetings of the Conference of the Parties provided for in Article 24;

[(b) To assist the Conference of the Parties and the Scientific Committee in performing their functions with regard to establishment and functioning of the Global Lists pursuant to the provisions of Article 15 of the present Convention as well as assist in facilitating and promoting transfer of technology and knowledge and technical cooperation pursuant to the provisions of Articles 17 and 19 of the present Convention;]

[(c) To maintain the Global Lists referred to in Article 15 of the present Convention;]

(d) To perform the functions assigned to it by any Protocol;

(e) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;

(f) To coordinate with other relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(g) To perform such other functions as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by the Secretariat of the United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to Article 24. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing, competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Article 27. [Scientific] and [Technical] [Technological] [Committee] [Subsidiary Bodies for Scientific and Technological Cooperation]

Alternative 1

[The Conference of the Parties shall at its first meeting establish such subsidiary bodies for providing scientific and [technical] [technological] advice as required for the implementation of the Convention.]

Alternative 2

[[1. The Conference of the Parties shall at its first meeting establish a Scientific and [Technical] [Technological] Committee with a balanced regional representation.]

[1. A Scientific and [Technical] [Technological] Committee is hereby established. The Conference of the Parties shall, at its first meeting, appoint the members of the committee with a balanced regional representation.]

[, whose advice will be based on the considerations outlined in Annex ...

ANNEX ...

- Considerations for the Scientific and Technical Committee

Pursuant to Article 27, the Scientific and Technical Committee will provide scientific and technical advice to the Conference of the Parties taking into account the following considerations:

1. Articles 5 - ... of this Convention;

2. National, regional and global concerns;

3. National, regional and global plans, lists and priorities;

4. Other regional and global agreements, mechanisms, technologies and sources of funding;

5. The relative significance among species, subspecies, ecosystems and areas;

6. Conservation management effectiveness.]

2. The Committee shall under the direction of the Conference of the Parties provide scientific and [technical] [technological] advice to assist the Conference of the Parties to promote the objectives of the Convention.]

Article 28. Reports

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, [submit] [present] to the Conference of the Parties, reports on:

The actions which it has taken for the implementation of this Convention [including, in particular, those pursuant to Articles 5 and 17-21 of this Convention] [and its view on the effectiveness of those actions and on the state of components of biological diversity within the limits of its national jurisdiction.]

Article 29. Operational Cost

1. Expenses incurred in respect of the technical and scientific cooperation referred to in Article 19 shall be borne by the Biological Diversity Fund. The expenses incurred in operating the Biological Diversity Fund shall also be borne by that Fund.

Article 30. Settlement of Disputes [42]

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

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[42] Although most environmental conventions provide a single system of dispute resolution for all articles (e.g., Vienna Convention for Protection of the Ozone Layer), some environmental conventions have limited the applicability of some dispute resolution mechanisms to specified articles (e.g., Protocol on Environmental Protection to the Antarctic Treaty, articles 19 and 20; U.N. Convention on the Law of the Sea, articles 286, 297-298).

2. If the Parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

(a) Arbitration in accordance with the procedure laid down in [Part 1 of] Annex I;

(b) Submission of the dispute to the International Court of Justice.

4. Alternative 1. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Annex I, part 2 unless the parties otherwise agree.

Alternative 2. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, a party which has not made a declaration under paragraph 3 above shall be deemed to have accepted arbitration in accordance with the procedure laid down in Annex I. If the parties to a dispute have not accepted the same means of dispute settlement, the dispute shall be submitted to arbitration in accordance with the procedure laid down in [Part 1 of] Annex I.

5. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

(Alternative in lieu of paragraphs 3 and 4)

3. If the Parties concerned cannot reach agreement through the mechanisms set down in paragraph 2, they shall submit the dispute to arbitration in accordance with the procedure laid down in Part 1 of Annex I, unless the dispute is submitted to the International Court of Justice (ICJ) in accordance with its Statute.

4. When ratifying, accepting, approving or acceding to this Convention or at any time thereafter, a state or regional economic integration organization may declare in writing to the Depositary that it does not accept paragraph 3 as binding.

5. If a party to the dispute has made a declaration pursuant to paragraph 4, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex I [, unless the Parties otherwise agree].

Article 31. Adoption of Protocols

1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention.

2. Protocols shall be adopted at a meeting of the Conference of the Parties. [43]

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

Article 32. Amendment of the Convention or Protocols

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any party to that protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-third majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the one hundred and eightieth day after the deposit of their instruments [44] of ratification, acceptance or approval by at least two-thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the [ninetieth] [one hundred eightieth] day [44] after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

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[43] One country agreed with the text as adopted by WG.I during the sixth negotiating session/fourth session of INC with a reservation on the procedure for the adoption of protocols.

[44] To achieve uniformity of the paragraph's formulation, an alternative period of 180 days was introduced into the text as recommended by the Legal Drafting Group established by the INC at its fourth session/sixth negotiating session. It was further recommended that a final decision be taken by the INC at its fifth session/seventh negotiating session. To achieve consistency between the procedures described in the paragraph, the Legal Drafting Group recommended substituting the phrase "deposit of their instruments" for the phrase "receipt by the Depositary of notification".

5. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 33. Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to any protocol:

(a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 32;

(b) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within one year from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous declaration of objection and the annexes shall thereupon enter into force for that Party subject to paragraph (c) below;

(c) On the expiry of one year [45] from the date of the communication of the adoption [45] by the Depositary, the annex shall enter into force for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to any protocol.

4. If an additional annex or an amendment to an annex is related to an amendment to this Convention or to any protocol, the additional annex or amendment shall not enter into force until such time as the amendment to this Convention or to the protocol concerned enters into force.

Article 34. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

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[45] The "one year" time period was introduced in this paragraph to achieve consistency with the preceding paragraph (b) as recommended by the Legal Drafting Group established by the INC during its fourth session/sixth negotiating session. The phrase "of the adoption" was introduced by the Legal Drafting Group to achieve consistency with paragraph (b).

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 35. Relationship Between the Convention and Its Protocols

1. A State or a regional economic integration organization may not become a Party to a protocol unless it is, or becomes at the same time, a Contracting Party to the Convention.

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned. Any Contracting Party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol.

Article 36. Signature

This Convention shall be open for signature at ... by all States and any regional economic integration organizations from ... until ....

Article 37. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to the Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

Article 38. Accession

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

3. The provisions of Article 37 paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 39. Entry Into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [twentieth] instrument of ratification, acceptance, approval or accession.

2. Any protocol shall enter into force on the ninetieth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol, has been deposited.

3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [twentieth] instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that Contracting Party, whichever shall be the later.

5. For the purposes of paragraph 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 40. Reservations [46]

[No reservations may be made to this Convention.]

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[46] Some environmental conventions contain a clause prohibiting reservations (e.g. Vienna Convention for Protection of the Ozone Layer; Protocol on Environmental Protection to the Antarctic Treaty). Some do not (e.g. London Dumping Convention; Convention for the Protection, Management and Development of the Marine and Coastal Environmental of the Eastern African Region). Some permit only specified reservations, an approach provided for in the Vienna Convention on the Law of Treaties and customary international law (e.g. Convention on the Conservation of Migratory Species of Wild Animals).

In accordance with the Vienna Convention on Treaties and customary international law, when a multilateral convention does not address the topic of reservations, the usual presumption is that states may formulate reservations that are not incompatible with the object and purpose of the Convention.

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal presents another approach. It prohibits reservations but allows to a State or political and/or economic integration organizations "declarations or statements ... with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of (the) Convention", provided that any such declaration or statement is not tantamount to a reservation.

Article 41. Withdrawals

1. At any time after two years from the date on which the present Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 42. Depositary

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

Article 43. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at..... on the .....day of.....

Annex I

Part 1

ARBITRATION

Article 1

The claimant party shall notify the Secretariat that the parties are referring a dispute to arbitration pursuant to Article 30 of the Convention. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the Protocol, the interpretation or application of which are at issue. [If the parties do not agree on the subject matter of the dispute before the President of the tribunal is designated the arbitral tribunal shall determine the subject matter.] The Secretariat shall forward the information thus received to all Contracting Parties to the Convention or to the Protocol concerned.

Article 2

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General who shall make the designation within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

[The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.]

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Part 2

CONCILIATION

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

Appendix I

RECOMMENDATIONS OF THE WORKING GROUP I
SUB-WORKING GROUP ON DEFINITIONS AND USE OF TERMS

I. Recommended text for inclusion in Article 2

"ALIEN SPECIES" means a species occurring in a particular country or area outside its historically known natural range, as a result of intentional or accidental introduction through human intervention.

"BIOLOGICAL DIVERSITY (OR BIODIVERSITY)" means the genetic, taxonomic and ecological variability among living organisms; this includes the variety and variability within species, between species and of biotic components of ecosystems.

"CONSERVATION OF BIOLOGICAL DIVERSITY" means the preservation (or integral protection), maintenance, sustainable use, recovery and enhancement of the components of biological diversity. [1]

"CONSERVATION": see conservation of biological diversity.

"DOMESTICATED OR CULTIVATED SPECIES" means species in which the evolutionary process has been influenced deliberately by humans to meet human needs.

"ECOSYSTEMS" means a dynamic complex of plant, animal and micro-organism communities and their non-living environments interacting as a functional unit.

"ENDANGERED SPECIES" means a species in danger of extinction and whose survival is unlikely if the casual factors continue operating.

"ENDEMIC SPECIES" means a species whose natural geographic distribution is restricted to a specific area or country.

"EX-SITU CONSERVATION" means the conservation of components of biological diversity (genetic resources, organisms, populations) outside their natural surroundings.

"HABITAT" means the place or type of site where an organism or population naturally occurs.

"IN-SITU CONSERVATION" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings. [2]

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[1] There was a strong feeling in the sub-working group that "sustainable use" should be excluded from this definition; however, since at this stage in the draft text of the Convention it is not decided whether conservation and sustainable use should go together, the sub-working group recommends that this matter be dealt with later.

[2] The sub-working group considered a definition of "in-situ conservation" formulated by Working Group II which includes domesticated species. No consensus was reached on whether that definition should be accepted, whether domesticated species should be dealt with in a separate definition, or whether the present formulation should stand.

"PROTECTED AREA" means a geographically defined area which is designated, or regulated, and managed to achieve specific conservation objectives.

"(WILDLIFE) CORRIDORS" means routes or avenues to ensure completion of life cycles and unimpeded migrations and gene flows. [3]

II. Other Recommendations

The sub-working group recommends:

1. The exclusion from Article 2 of the terms:

   - "INDIGENOUS SPECIES", "NONTERRESTRIAL SPECIES", "RATIONAL USE OF BIOLOGICAL DIVERSITY", "TERRESTRIAL SPECIES", and "WILD SPECIES", as they no longer appear in the text of the draft Convention.

   - "THREATENED SPECIES" and "SPECIES THREATENED WITH EXTINCTION", since they need not be defined, as is the case with IUCN and CITES.

   - "INDIGENOUS POPULATIONS", since it does not fall within the terms of reference of this sub-working group.

2. That if the term "UTILIZATION/USE OF BIOLOGICAL DIVERSITY" is to be defined in Article 2, it should be dealt with from the point of view of sustainable use of biological diversity.

3. That the term "REGIONAL ECONOMIC INTEGRATION ORGANIZATION", defined as "an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it", as well as other terms such as "MONITOR" and "SPECIES" (including marine species, as suggested by one delegation) be dealt with should Working Group I so decide.

4. That the term "SIGNIFICANT" as proposed by one delegation should not be defined.

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[3] There was a feeling that the text of this term should be finalized after finalization of the text of Article 7 of the draft Convention.

Appendix II

ELEMENTS FOR INCLUSION IN THE PREAMBLE/FUNDAMENTAL PRINCIPLES/GENERAL OBLIGATIONS AS PROPOSED BY THE GROUP OF 77 AND CHINA

1. *Sovereignty and responsibility (Fundamental principle)*

1.1 Sovereignty and responsibility for damage.

State sovereignty over own resources. Responsibility for activities in their jurisdiction not to damage biodiversity of other States or beyond national jurisdictions.

1.2 Responsibility of each Party for conservation and sustainable use of own biodiversity resources.

2. *Funding (Fundamental principle)*

2.1 Adequate new and additional funding by developed countries for additional burden to developing countries of biodiversity conservation.

3. *Technology transfer*

3.1 Benefits from research and development to be shared by countries providing genetic material.

3.2 Transfer of biotechnologies to developing countries on preferential and non-commercial basis. (Fundamental principle)

4. *Access to technology and to genetic material* (Fundamental principle)

Access to both genetic materials and conservation technologies to be subject to mutual agreement.

5. *International cooperation (Fundamental principle)*

5.1 International cooperation in addition to national efforts is necessary for conservation.

6. *Prevention (Preamble or obligation)*

Prevention of damage to biodiversity is essential. The precautionary principle (lack of full scientific certainty is not a reason for avoiding or minimizing threat of significant reduction or loss of biodiversity), and the principle of action at source complete the mission of prevention.

7. *Common concern (Preamble)*

Conservation of biodiversity is common concern of all mankind.

8. *Conservation (Preamble or objectives)*

In-situ and *ex-situ* conservation.

9. Recognition and reward of traditional knowledge of local communities which contribute conservation and sustainable use of biodiversity. (Preamble or general obligation)

10. The fulfilment of the obligations under this Convention by developing countries would be subject to the effective provision to them of adequate, new and additional resources and of technology transfer to them on preferential and non-commercial terms. (General obligation, Article 4)

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BIODIVERSITY COUNTRY STUDIES

*Note by the Executive Director**

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* This note is actually the executive summary of a long synthesis report of 10 country studies whose first phases have been completed. The full report is available, in English only, for consultation by delegates upon request.

I. INTRODUCTION

1. In discussing global biodiversity conservation needs and costs, the *Ad Hoc* Working Group of Experts on Biological Diversity identified the need to carry out an in-depth study on the cost of basic conservation needs, taking into consideration the level of funding currently provided by existing development and other assistance programmes for the purpose of conserving biodiversity in developing countries. Initial cost estimates suggested that $US 1-10 billion would be needed yearly over the next 10 to 15 years to meet priority conservation needs identified by the Working Group.

2. To sharpen the estimates of projected costs, the Working Group, as well as the Intergovernmental Negotiating Committee for a Convention on Biological Diversity, recommended the preparation of country-specific case-studies taking into consideration the full range of biodiversity and ecosystems. By having a representative sample of countries, it was hoped that a preliminary extrapolation from the sample would give a global estimate of the costs, benefits and unmet needs for global biodiversity conservation and sustainable use.

3. To facilitate harmonization and comparability of the results obtained from different countries:

(a) Guidelines, including a methodology and format for the preparation of these studies, were prepared by UNEP;

(b) An international steering committee and advisory team were established to provide advice and guidance to countries and to ensure common understanding and uniformity in the application of the guidelines;

(c) The World Conservation Monitoring Centre (WCMC) in Cambridge, United Kingdom, was involved to assist and advise individual countries on information/data collection, collation, analyses and management.

4. At the national level, national biodiversity units (NBUs) were established to coordinate and oversee the preparation of the country studies.

5. Countries which agreed to undertake biodiversity case-studies include: Australia, Bahamas, Brazil, Canada, Colombia, Costa Rica, Germany, Guyana, Indonesia, Kenya, Madagascar, Malaysia, Mexico, Mozambique, Namibia, Nepal, Nigeria, Papua New Guinea, Peru, Poland, Solomon Islands, Thailand, Uganda and Zaire. They embrace a wide range of ecosystems: tropical as well as temperate forests and grasslands; arid and semi-arid lands; deserts; tundras; mangroves, coral reefs and marine ecosystems; swamps, marshes and freshwater habitat; heaths and moorlands.

6. Ten of the above-mentioned countries have submitted their biodiversity country-study reports: Bahamas, Canada, Costa Rica, Germany, Indonesia, Kenya, Nigeria, Poland, Thailand and Uganda. This list includes both developing and developed countries, representing a wide spectrum of socio-economic levels, biodiversity richness and global biogeographical realms.

II. STATUS OF BIODIVERSITY

7. Each country study attempted to describe the whole range of biodiversity in the country following the guidelines. The studies include inventories of species, habitats, ecosystems, national protected areas and ex situ conservation facilities and institutions, noting any gaps in

knowledge. In each of these categories, countries provided best available indications of the current status of their biodiversity and, to the extent possible, estimates of its rate of change.

8. Estimates of the total number of species on Earth range between 10 million and 80 million. Of this total, approximately 1.7 million species have been described, representing between 2.1 and 17 per cent of the estimated global total. The total numbers of species reported from the 10 countries submitting country studies are: Bahamas; 6,206; Canada; 71,309; Costa Rica; 84,392; Germany; 53,000; Indonesia; 46,605; Kenya; 34,863; Nigeria; 28,660; Poland; 46,903; Thailand; 122,200; and, Uganda; 18,430.

9. The country studies highlight the lack of available knowledge on the total species numbers occurring within the countries studied. Species numbers reported therefore reflect the amount of past research and the accessibility of data to the national biodiversity units and not necessarily actual species diversity.

10. Information about higher vertebrates (except for fish) and vascular plants is substantial. Information on other groups of organisms such as microbes is, however, limited. In future, national biodiversity units could refine information on all taxonomic groups and initiate programmes to repatriate the large volume of data held abroad. This point is particularly pertinent for data on plants.

11. All 10 countries indicate the number of sites and total areas considered as national centres of high species endemism as well as total areas of various ecosystems.

12. All 10 countries demonstrate a firm commitment to *in situ* conservation as a strategic approach to biodiversity conservation. Measures to increase total area under national protection systems are proposed by expanding existing gazetted systems and/or establishing new areas.

13. Total protected areas in the 10 countries cover 123,172,242 ha, which represents 19 per cent of the global total of 651,487,597 ha reported in the 1990 United Nations List of National Protected Areas.

14. Most countries attach great importance to *ex situ* conservation to complement *in situ* activities. All the countries propose to increase the number of *ex situ* conservation facilities or strengthen existing ones, although not all countries indicate the additional number required.

III. MEASURES FOR CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY

15. The country studies identify biodiversity of significance for conservation and indicate measures to achieve certain levels of conservation and sustainable use. The measures proposed by Governments in their country studies to a great extent convey the concerns of Governments worldwide as reflected in the fifth draft Convention on Biological Diversity currently under negotiation. The relevant articles (5-20) of the draft anticipate a wide range of activities that countries would be expected to undertake in fulfilment of the Convention.

16. The measures proposed in country studies feature prominently in the actions outlined in the Global Biodiversity Strategy as well as those in *Caring for the Earth. A Strategy for Sustainable Living*. This is

important since the strategies in these two documents are broad-based and contain essential/critical and far-reaching actions, most of which require implementation at the national level.

17. The differences among the measures proposed by different countries reflect a number of factors including the status of biodiversity conservation and use within the country, the opportunities for development of biodiversity-based commercial activities, the threats to biodiversity, etc. For example, in countries where the use of biodiversity as a major contributor to the national economy is well established, biological research to improve the scientific basis for conservation of the resource and its sustainable use has tended to take precedence. Where environmental degradation is a matter of serious national concern, management measures such as rehabilitation of degraded lands, improvement of past practices, development of sustainable uses of biodiversity and enforcement measures predominated. Where programmes are just beginning, institution-building is seen as a major requirement.

18. The preparation of a country study has, of itself, proved to be a very valuable measure for setting a country on a clearer path towards better conservation and more rational use of its biodiversity. In the course of this process, national biodiversity units have been established and data on the identity and status of biodiversity that exist within or outside the country are progressively being assembled. The concept of counting the costs and benefits of biodiversity conservation and utilization has been introduced and is being progressively clarified. The country-studies exercise and their resultant national biodiversity units could prove to be a useful foundation upon which to build a national capacity for institutional and human capacity building. The results could be used for further development and strengthening of the national biodiversity units into national biodiversity monitoring centres and their linking into a global biodiversity information network that can be expanded with subsequent rounds of country studies.

IV. ESTIMATION OF COSTS OF MEASURES FOR CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY

19. The country studies have attempted to estimate the additional costs that could be incurred by developing countries as a result of undertaking or strengthening activities that will ensure effective conservation or use of biological diversity. Quantification of such costs is a complex exercise and precision is difficult to achieve. Time constraints have prevented countries from gathering information comprehensively from all sources. This is compounded by the fact that there is no baseline or clearly defined set of initial reference conditions to calculate additional costs. In addition, other cost items/measures may exist, the precise costing of which does not appear possible at present. Under the circumstances, the cost figures derived from the country studies should be viewed only as orders of magnitude.

20. In order to have concrete commitments to the conservation of biodiversity, it is useful to identify a global aggregate figure (a realistic order of magnitude) of costs based on national measures to be undertaken by developing countries. Countries undertaking studies were therefore asked to identify biota of significance for conservation and use, indicate the measures they plan to undertake to achieve the required level of biodiversity conservation and its sustainable use and to give an estimate of the additional costs that they can expect to arise from implementing the identified measures.

21. Countries which have a sound infrastructure for biodiversity conservation require less funds per unit of species and ecosystems conservation than those which have a badly damaged or neglected infrastructure. This makes the cost profile of individual countries different. However, it is possible to draw meaningful conclusions in terms of the international assistance needed. Other factors that could affect the cost profile are the total land area of the country concerned, its accessibility, institutional and human capacity, population size, effectiveness of public administration, and existing infrastructure. The mix of measures identified by the countries and their relative priorities reflected these considerations. It is important to note that no adjustments are made to the cost figures reported by individual countries for probable biases in reporting or differences in estimation methodologies.

22. Incremental costs in the context of biodiversity conservation constitute compensation for expenditures not offset by nationally appropriated benefits. The unmet costs estimated in the country studies consist of two components: *additional* costs beyond present level of expenditure which could generate national benefits and *incremental* costs that do not generate such nationally appropriated benefits. In the studies, costings were made of activities that could generate both national and international benefits (the so-called joint product problem). None of the country studies received so far have tackled the issue of incremental costs. It is, however, not easy to define with any exactitude which costs are incremental. Flexibility is therefore warranted in the application of the incremental costs approach. The incremental costs must be calculated against a "business-as-usual" baseline plan drawn from a purely national perspective.

23. The 10 country studies received so far have attempted to cost the measures identified by them for the conservation and sustainable utilization of biodiversity and to calculate their unmet needs. These measures cover a broad, but largely common, approach to biodiversity conservation and use. Important differences in the priorities attached to different measures or groups of measures and differences in the progress already made in their implementation, thus create a disparity in the estimation of the magnitude of the unmet costs by individual countries.

24. The total and unmet annual costs assessed in the 10 studies are as follows:

	Total annual costs (Millions of US dollars)	Unmet annual costs (Millions of US dollars)
AFRICA:		
1. Kenya	160	37
2. Nigeria	593	325
3. Uganda	70	58
ASIA:		
4. Indonesia	290	231
5. Thailand	120	60
EUROPE:		
6. Poland	800	100
7. Germany	1200	950
LATIN AMERICA/CARIBBEAN:		
8. Bahamas	110	84
9. Costa Rica	100	81
NORTH AMERICA:		
10. Canada	2686	986

25. From the figures supplied by the seven developing countries listed above, the following seven broad scenarios were established for estimating the annual unmet funding needs of all developing countries:

A. Extrapolation on the basis of the unmet needs of the seven developing countries adjusted for biodiversity richness and country size;

B. Extrapolation on the basis of a percentage of GDP as desirable expenditure for biodiversity conservation and sustainable use;

C. Extrapolation on the basis of the number of sites and total area of national protection systems as percentage of global total;

D. Extrapolation on the basis of species diversity in each developing country as percentage of global described species:

E. Extrapolation on the basis of both biodiversity richness and *in situ* Conservation Infrastructure;

F. Extrapolation on the basis of unmet needs identified by developing countries adjusted for number of countries per region;

/...

G. Extrapolation on the basis of average conservation cost per square kilometre taken from the country studies of developing countries.

26. Different rationales are used to extrapolate total additional funding requirements from the sample of country studies available. For some proposed scenarios (F and G), the present sample is too small, but they should be considered when more country studies are available. It should also be noted that all the methods will give better results when more countries are included.

27. Out of the seven scenarios, the global annual unmet funding needs of developing countries for effective conservation and use of biodiversity can so far be meaningfully derived from only five of them, namely, A, B, C, D, and E. The estimates obtained using different scenarios are as follows:

Scenario	Deflator*	Billions of US dollars
A. Extrapolation on the basis of unmet needs of developing countries adjusted for biodiversity richness and country size	25%	8.45
B. Extrapolation on the basis of a percentage of GDP (0.5%) as desirable expenditure for biodiversity conservation and sustainable use	-	21.13 to 42.25
C. Extrapolation on the basis of the number of sites and total area national protection systems as percentages of global total	-	42.0
D. Extrapolation on the basis of species diversity in each country as percentage of global described species	-	0.68 to 15.8
E. Extrapolation on the basis of both biodiversity richness and *in situ* conservation infrastructure	25%	11.1

* A deflator was applied to reflect - among other things - possible over-costing and reliance on non-cost effective measures.

28. Clearly, the estimates are no more than orders of magnitude. They may, however, be useful in the discussion on the nature and extent of financial resources to be transferred to developing countries if they have to meet their obligations under the Convention. Additional and more precise information at the country level is needed before it is possible to go any further with this kind of analysis. Because of a lack of time and available resources, the scenarios presented above are based largely on univariate methods. Estimating unmet needs based on multivariate techniques might have enhanced the precision of the predictions of these scenarios.

29. It is worth noting in this connection that the total annual costs of 117 developing countries in scenario A, for example, comes to $12.67 billion, i.e. $8.45 billion multiplied by 1.5 (from the country studies received the total annual cost appears to be 1.5 times the annual unmet costs. Total costs for the 31 OECD members and other high-income economies (such as oil-producing countries) amount to $56.9 billion (based on the median figure between the Canadian and the German total costs -

these were the only two developed-country studies received). Total global annual costs then amount to $69.57 billion per annum (i.e. $12.67 billion plus $56.9 billion).

30. *Interim funding for the convention.* A possible scenario for interim funding until the Convention comes into force is proposed as follows, taking into consideration that estimates B and C are outliers:

(a) An increase of $500 million per year in the next five years raising the present flow of external assistance from around $100 million from the Global Environment Facility to $600 million per year up to 1997;

(b) Thereafter, a slightly accelerated flow (of around an additional $750 million) could be anticipated, raising the total funds from external funding per year to $850 million over the next three years (that is a total of approximately $5.5 billion to end of century). In other words, a roll-over mechanism is called for, starting realistically but accelerating once the institutional and human capacity as well as infrastructure are in place.

V. THE BENEFITS OF CONSERVING BIODIVERSITY AND THE COST OF INACTION

31. Benefits estimates can be important in showing that funds committed to conservation of biodiversity and its sustainable use may be regarded as an investment that contributes to maintaining and enhancing the well-being of local and international societies and their economies. Alternatively, such estimates can indicate the level of "cost of inaction" in terms of reduced or lost benefits if no action is taken to conserve biodiversity and use it in a sustainable way.

32. Many of the benefits that biodiversity provides fall outside the cash economy. Even when some socio-economic benefits accruing to society can be given a cash value (monetized), these benefits do not translate to cash. Although the replacement value of these goods and services may have a very high monetary equivalent, the people and the developing country in question seldom have the cash in hand to reinvest in biodiversity conservation.

33. It is evident that the time-frame within which the studies were conducted did not allow the national biodiversity units enough time to deal adequately with the benefits resulting from their biodiversity at least as far as the monetization of the benefits is concerned. Detailed estimates of the benefits of conserving biodiversity and its use were provided by a few countries using evolving valuation techniques. Others have relied on approximate indicators of the total value of gross output in sectors (such as fisheries, forestry, agriculture, etc.) where 'biodiversity' is of importance.

34. The benefits provided by eight countries varied considerably. A majority of the countries used gross benefits from sectors such as forestry and agriculture. The ratio of gross benefits to costs ranged from 5 to 20 for five of the countries but the range was considerably large for the remaining three (these ratios are 0.1, 46 and 951).

35. Other aspects of benefits evaluation such as estimation of the net benefits attributable to biodiversity rather than gross benefits, benefits related only to the proposed measures rather than to total country's biodiversity, initial investments required to generate the benefits, national and international benefits, non-use values, distribution of

benefits at national and international levels as well as the issue of sustainability in generating benefits were not adequately addressed in this round of country studies.

36. Despite their limitations, the studies shed some light on what proportion of the monetized benefits from biodiversity conservation will be at risk if the minimum costs are not met.